

PATENT APPLICATION  
Attorney Docket No. 03B1682REMARKS

The Examiner has allowed all of the claims except claims 7 and 21. The Applicant respectfully traverses the Examiner's only two remaining rejections.

First of all, the Examiner rejects claim 7 under 35 U.S.C. §102 (e) as being anticipated by the Waltz reference.

Claim 7 is a method claim which includes the limitation of:

“manipulating said plurality of rim gripping members, in response to a force from a source other than contact with said game call, so as to cause each of said plurality of rim gripping members to exert a force directed inwardly of said rim and toward a common central point,”

The Examiner states the following in the third paragraph of page 2 of the latest office action: “It should be noted that the force of the user's hand on rails 50 when placing the game call between the rails 50 can manipulate the plurality of rim gripping members.”

What is most telling is what the Examiner does not say. The Examiner does not say that Waltz teaches that the rails 50 should be moved so as to manipulate the flexible members 65. It does not teach that this would be even desirable. There is no teaching in

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the Waltz reference that the rails 50 be so severely forced so as to cause the manipulation of the flexible biasing members 65. Without a teaching of the claimed step, there is no anticipation of the claimed invention. Furthermore, without a teaching of even the desirability of performing the claimed step, there can be no obviousness rejection based upon the Waltz reference.

Moreover, the Waltz reference in fact teaches away from the contorted interpretation give by the Examiner. Waltz refers to only one element that is flexible -- that is biasing member 65, and it describes it as being only "slightly" flexible. It is incorrect to state that the Waltz reference teaches the rails 50 to be flexible so as to permit manipulation of the biasing member 65. The Examiner appears to be referring to some hypothetical, theoretical and incidental movement of the rails 50. This is both improper and incorrect.

First of all, rails 50 are referred to as parallel rails. The Examiner's contorted view of the teaching of Waltz would result in bending of the rails in such a way as to prohibit them from being parallel. The Examiner cannot claim that the rails are only slightly perturbed and then return to parallel when the force is removed, because this would make them elastic. The Examiner's own characterization of the Waltz reference with regard to the rejection of claim 21 was that it teaches just the opposite -- a "non-elastic" structure configured to grasp.

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For many reasons, it is apparent that the Waltz reference does not anticipate the claim 7.

Rescission of the rejection is hereby requested.

The Examiner also incorrectly rejected claim 21 as being obvious over Musacchia in view of Waltz. The Examiner fails to consider all of the claim limitations when reading and rejecting claim 21. The Examiner states that Musacchia teaches a plurality of structures 14 and 16. The claim language is much more than that. The claim is directed to a “plurality of non-elastic structures *configured to grasp therebetween the peripheral top rim;*” (emphasis added) The legs 14 and 16 do not even touch the game ball, let alone GRASP THE TOP PERIPHERAL RIM. The Examiner only cites Waltz for the proposition of having non-elastic structures replace elastic structures. So, on its face, the cited teaching of Waltz fails to address the first clear shortcoming in Musacchia as an invalidating reference.

The Examiner also fails to consider the claim as a whole, as is required by 35 U.S.C. §103. Claim 21 claims three (3) distinct elements: 1) a plurality of structure to grasp the rim; 2) an adjusting mechanism to vary a separation distance between the ends of #1; and 3) a strap.

The Examiner appears to fail to understand that the claimed adjusting mechanism is not synonymous with the structures configured to grasp, but the adjusting mechanism is to adjust the ends of the structures to grasp.

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The Examiner cites column 4, lines 64-67 as an adjusting mechanism for adjusting the ends of the structure for grasping. Lines 64-67 refer to an endless elastic band which is the structure which has contact with the rim. Musacchia does not have a structure with ends which grasps the rim, and it does not have any mechanism for adjusting anything (either with ends or without ends) to vary the separation distance.

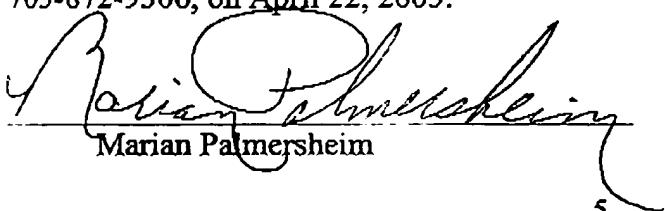
The Examiner is encouraged to seriously and promptly consider these remarks and to remove the rejection and avoid the need for an unnecessary, but certainly successful, appeal of this rejection by the Applicant.

Respectfully submitted,

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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, facsimile number 703-872-9306, on April 22, 2005.

  
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